

ML6-7 Handout – Contract Law
[Slide numbers in square brackets]

1) [2] Introduction to Contracts

- a. What is a contract (“K”)? _____ a legally enforceable agreement that set forth the rights and duties of two or more parties _____

- b. Goal: For contracts to be _____ enforceable _____

[3] *The Five Big Picture Questions*****

- 1) Is there a contract?
- 2) If there is a contract, what does it mean?
- 3) Is there performance or is there breach?
- 4) If breach, is there an excuse?
- 5) If no excuse, what is the remedy?

2) [4] Big Picture Q1 – Is there a contract?

- a. In order for a K to be enforceable, a contract (K) needs:
(1) _____ **mutual assent** _____
(MA) and (2) _____
_____ **consideration** _____ (KSN)
- b. Mutual assent includes the doctrines of _____ **offer** _____
and _____ **acceptance** _____

3) [5] The Offer

- a. Definition: A manifestation of willingness to enter into a bargain
- b. Every offer has two elements: (1) Offeror _____ **intends** _____ to enter into a deal; and (2) _____ **definite terms** _____

- c. Case: Baer v. Chase: Writer of *the Sopranos* agreed to “take care of” Plaintiff, who he used to discuss story ideas with. Is there a contract? _____ No, no definite terms _____
- a. Hypo: Go run around campus 3 times, and I’ll give you a good grade in the course. Offer?
 _____ No _____

- d. What are **not** offers? _____ invitations to bargain, gifts, adverts _____

4) [6] Acceptance

- a. How can an offeree accept the deal?
 _____ **words** _____ or
 _____ **conduct** _____
- b. Acceptance follows the _____ **mirror image** _____ **rule**, where the acceptance must mirror the same terms of the offer
- c. Any additional/different terms is a
 _____ rejection _____ of the original offer and
 a _____ **counter-offer** _____

5) [7] Termination

- a. Effect: If an offer is terminated by either party, _____ **it cannot be accepted later** _____

- b. **1 - Revocation** – The offeror _____ **takes the offer back (before it is accepted)** _____

- c. Ex: I offer you \$50 to sing in front of class. Before you do so, I say, “changed my mind, I’m keeping the \$50.” Can you still accept? _____ No _____ **because an offer can be revoked** _____ anytime before acceptance _____
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- d. **2 - Rejection** – The offeree does not accept the offer or make a counteroffer with new, different or additional terms
- e. **3 - Expiration** – Time limit for acceptance expires

6) [8] Consideration (KSN)

- a. Definition: KSN is the inducement, price or promise that causes a person to enter into a contract and forms the basis for the parties’ exchange
- b. **Element 1: Value** – Benefit to promisor or detriment to the promisee, which can be **(1) an act or (2) a forbearance**
- c. **Element 2: Bargained-for exchange** – Promises between the parties
- d. Act - Ex: I will pay you \$5 to go get me a soda from the vending machine.
- i. **Promise**: _____ pay \$5 _____
 - ii. **Return Promise**: _____ get spit a soda _____
- e. Forbearance – Agreeing not do so something
- i. *Hamer v. Sidway* – Nephew and uncle agree that the nephew will not drink or smoke until age 21 in exchange for \$5,000. At 21, having complied, uncle refuses to pay. KSN? _____ Yes _____

7) [9] Exceptions to KSN

- 1) _____ **illusory promises** _____
(where one party can change the terms at any time);

- 2) preexisting duty
(someone is already obligated to do something); and
3) Past KSN (work is already done)

- a. Hypo: Teach TVF-4200 for \$1. I teach, then sue. KSN?
— Yes —
i. Courts do not look to see whether the dollar value of consideration was adequate
b. If a contract is signed and later modified, must be supported by
new KSN

8) [10] Types of Contracts

- a. express **contracts** (in writing)
b. implied **contracts** (words or **conduct** of parties)
c. **Promissory estoppel**/ reliance
i. No actual contract exists, but the Plaintiff has spent
time or money preparing for the contract and it would be unfair for the court not to enforce a deal
d. **Quasi-contract**/unjust enrichment/**restitution**
i. Difference: Reliance looks at the detriment to the Plaintiff, whereas unjust enrichment/restitution looks at the
benefit
e. **Option Contracts** – Payment to keep an offer open for a specified period of time where the offer cannot be revoked

9) [11] Reliance and Restitution Theories

- a. Reliance theory (also known as **promissory estoppel**) looks at the Plaintiff's detriment
b. Case: *Kirksey v. Kirksey* – Defendant wrote his sister-in-law and persuaded her to sell land to him at a discount in exchange for living on his land. After two years, was removed. Is there a K under a reliance theory?
Yes

Restitution/Unjust Enrichment

- c. Scenario: Plaintiff gave some
benefit to Defendant, Plaintiff
 expected to be paid for the benefit, and Defendant would be
unjustly enriched if they were allowed to keep the benefit
 without paying for it
- i. Ex: Painter paints someone's house, homeowner does not
 pay. Who wins?
painter

10)[12] Verbal Contracts

- a. Verbal contracts are generally unenforceable between parties
- b. Under the **statute of frauds**, certain types of agreements must
 be in writing
- a. Ex: Contracts that cannot be performed within 1
 year from the date of their
 formation

11)[13] Big Picture Q2: If there is a K, what does it mean?

- a. This question focuses on the contract's
terms
- b. Courts are reluctant to fill in the terms of a contract because of
 the merger/integration
clause
- c. Courts can use "gap fillers" to determine what the parties meant
 with respect to **material/major contract** terms, which include:
price, terms,
 credit

- d. Implied Covenant of ____ Good Faith____
and Fair Dealing - Each party will act reasonably and fairly
towards completing their end of the deal

12)[14] Contract Ambiguities

- a. Ambiguous (or vague) terms have multiple meanings which are
accidentally unclear; court will try to determine the parties'
____ intent____
- b. Factors: (1) plain meaning; (2) extrinsic evidence or prior
negotiations; (3) expert testimony; (4) course of performance
- i. If a court cannot resolve the ambiguity after all of these
factors, it will be interpreted against the party that
____ **drafted**____ the contract
- c. Once P has proven that there is a valid contract (K) showing
that there is MA and KSN, the contract is presumed to be valid,
and ____ enforceable____. If so, the
burden of proof **shifts** to the Defendant to prove the K is **not**
valid, or that the Defendant has **an** ____ excuse/
defense____

13)[15] Big Picture Q3: Is there performance or is there breach?

- a. Rule: Full performance of a contractual obligation
____ never____ a breach
- b. What happens if a party **substantially** performs its obligations?
A party will typically get the full contract price less the ____
____ **value of any**
defects____

c. ___poor___ performance, ___part___ performance, ___no___ performance may be a breach

d. **Material Breach** – failure to substantially perform

i. If a party is in material breach, excuses the ___non___ breaching party's performance

e. **Immaterial breach** – substantial but incomplete performance

i. Breaching party usually has the right to ___cure___

[16] Special Performance Rules. *mock trial 2c

f. **Anticipatory Repudiation:** ___before___ the time for performance is due, one party indicates to the other that they will not honor their part of the contract

i. Effect: Other side does not need to perform

g. **Strict Performance** – If a party wants to make performance due on a specific date, they must include a ___time___ of the essence ___clause

14)[17] Big Picture Q4: If there is a breach, is there an excuse?

a. Void contracts mean that ___neither___ party can enforce the contract (ex: illegality, unconscionable/one-sided terms)

b. Voidable contracts mean that ___one___ party can choose to ___enforce___ the contract or **rescind/disaffirm** (ex: capacity, fraud, duress, undue influence)

15)[18] Capacity-Based Defenses

- a. Rule: A person suffers from a mental incapacity if they cannot understand the nature or consequences of the transaction
- b. **Capacity Issues** – mental incapacity can make a contract _____voidable_____
- c. **Minors** – A minor can _____disaffirm_____ a contract anytime **before they turn** ____18_____

16)[19] Fraud

- a. Whether the contracting party **understood** the terms of the contract or if they were induced into a contract through a _____**false statement of fact**_____
 - i. This misrepresentation must be factual and not an opinion; the Defendant must know the statement was false; the issue was material/major; and the Plaintiff relied on the false statement
- b. *Stambovsky v. Ackley*: A seller of a house does not disclose that the house is haunted. The buyers are terrified of ghosts and ask the seller if the house is haunted; the seller says nothing. After completing the purchase, the buyers experience paranormal activity. Can they rescind the deal claiming fraud?
 - i. Result?
 _____**Yes**_____

Duress and Undue Influence

- c. **Duress** – Improper threats that force someone into a contract
- d. **Undue Influence** – One party is using another's _____vulnerability_____ to their advantage

17)[20] Mistakes and Conditions

- a. **Mutual Mistake** - Both parties share the same mistake
- b. **Unilateral Mistake** - One party believes they have entered into a contract under a mistaken assumption (usually mathematical)
- c. **Condition** – An event that must occur
_____ **before** _____ performance is due. If condition never occurs, then party is _____ **excused** _____ from performing their obligations

18)[21] Excuses. *mock trial 2c

- a. **Impossibility** is when the promisor cannot perform what they said they would do (“_____ I can’t _____”)
 - i. **Ex:** _____ death of prom _____

- b. **Impracticability** – When neither party anticipated that the contract would be extraordinarily difficult and unfair to one party (“_____ I can’t _____”)
- c. Ex: 30% increase in the cost of raw materials, supplier wants to back out of contract or renegotiate for much higher payment. Buyer says no. Is seller excused?
_____ No _____

- d. **Frustration of Purpose** – Some event has occurred that neither party anticipated and the contract now has _____
 - i. (“_____”)

19)[22] Force Majeure

- a. Unforeseen event that prevents someone from fulfilling their contractual obligations (ex: _____ act of God, natural disaster _____)
- b. **Effect:** Does not excuse, but _____ a party’s obligation to perform while force majeure event is occurring

[23] List of Excuses - These are all of the excuses/defenses that a Defendant can use in a breach of contract lawsuit:

Before a deal is made – capacity and consent

After a deal is signed - fraud, duress, mistake, undue influence

During a deal – conditions, warranties, impossibility, impracticability, frustration of purpose

After a deal has ended – statute of limitations (a party must file a lawsuit within _____ years of a breach of contract)

20)[25] Big Picture Q5: If there is no excuse, what is the remedy?

- a. A remedy is the **method a court uses to** _____ **compensate** _____ **an injured party**
- b. Two types of remedies: _____ **Money** _____
(legal) and _____ **non-monetary** _____
(equitable) **damages**

[26] Monetary Damages

- c. **1 – Expectancy Damages** – What the non-breaching party would have received if the contract was ____ **fully performed** _____
 - i. **Policy:** Designed to put the injured party in the _____
_____ **same position** _____ they would
be in if both parties performed their obligations
- d. **Compensatory damages**
 - i. Ex: Andrea is going to star in my movie for \$7M. A few days before the shoot, Andrea informs me that she won't show up. I hire Gloria instead for \$10M. I sue Andrea and win. What are my damages? ____ **3 Mil** _____
- e. **2 – Reliance Damages** – The monetary equivalent of where the non-breaching party would have been if the contract ____ **never existed** _____ rty spent
_____ **time** _____ or ____ **money** _____
- f. **3 – Restitution Damages** – Requires the breaching party to give back any gains it improperly acquired under the contract

21)[27] Special Monetary Damages *

- a. **Liquidated Damages** – ____ **pre-determined** _____ specified monetary amounts that are agreed to in the contract
- b. **Nominal Damages** – Awarded for breach without proof, court will award the injured party a “moral” victory of a small amount of money, usually ____ **1 dollar** _____
- c. Eligibility for damages – To win monetary damages under *any* of the above theories, a Plaintiff must prove:
 - i. 1 – the Defendant’s breach ____ **caused** _____ **the loss**
 - ii. 2 – damages can be proven with _____ **reasonable certainty** _____ and were foreseeable
 - iii. 3 – Plaintiff ____ **mitigated** _____ its damages (use reasonable efforts to keep as low as possible)
- d. ***Punitive Damages** – designed to _____ **punish** _____ the defendant for wrongful conduct
 - i. Rule: Punitive damages are _____ **never** _____ awarded in BoC actions

22)[28] Non-Monetary Remedies

- a. Why do we have non-monetary remedies? Monetary damages on its own are insufficient/inadequate
- b. Specific Performance – An order from the court that a party must perform what they agreed to under the contract
- c. Injunction – An order from the court that a party refrain from doing something

- i. Can a studio make talent waive their right to an injunction as part of a contract?

_____ Yes _____

- d. Reformation – An order from the court to _____ **re-write** _____ part of a contract

- e. Rescission – An order from the court to _____ **void** _____ a contract in its entirety

23)[29] Idea Submission/Implied-In-Fact Contracts

- a. Issue: Writer disclosed an idea to studio who makes a movie based on idea without giving the writer payment or credit

- i. Court focuses on the “_____ **Circumstances of the disclosure** _____”

- b. To win on a breach of implied-in-fact k lawsuit, P must prove:
Elements: (1) Writer created the idea; (2) Writer _____ **conditioned their offer** _____ to disclose the idea to the defendant **on the defendant’s express promise to pay** for the idea if the defendant used it; (3) Prod. Co., knowing the condition beforehand, voluntarily accepted its disclosure and (4) Prod. Co. found the idea valuable and **used it without giving the writer** _____ **payment** _____ **or** _____ **credit** _____

24)[30] Desny v. Wilder

- a. Facts: Writer sends treatment to studio head, which is then used by Paramount to create the movie *Ace in the Hole*. Writer does not receive payment or credit for the use of his idea and sues for breach of implied-in-fact contract. Who wins?

_____ **Yes** _____

25)[31] Spinner v. ABC

- a. Facts: Writer submits treatment to ABC in 1977 for a TV series based off of strangers on a desert island called “*Lost*”. ABC produces “*Lost*” in 2003 and does not credit or pay writer. Writer sues. Who wins/why? _____ **No, “independent creation defense”** _____
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26)[32] Entertainment Talent Deals

- a. Option Purchase Agreements have the following deal terms:
- i. Option Term – _____ **time prod. Company has to sell your idea** _____
 - ii. Option Fee – _____ **payment for exclusive window** _____
 - iii. Purchase Price – _____ **payment for the script** _____
 - iv. Ancillary Rights – _____ **rights to other things like merch, spin-offs, etc** _____

****first negotiation deal- studios has to come to you first to write sequels, spin-offs, etc**

- b. What happens if the company cannot sell the script? Rights _____ **revert** _____ back to the author at the end of the option term, and _____ **writer can attempt to sell again** _____